

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1099 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NATVARBHAI RAMABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1099 of 2000
MR DF AMIN with MR SONI for Petitioner No. 1
MR DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/10/2002

ORAL JUDGEMENT

The appellant herein came to be convicted by learned Additional Sessions Judge, Mehsana for offences punishable under Sections 332, 323 and 327 of IPC, by a judgement and order rendered in Sessions Case No. 254/97 on Nov. 11, 2000. The appellant was sentenced to undergo RI for 3 months and to pay a fine of Rs. 200/-, in default to undergo SI for 10 days for offence punishable under Section 332 of IPC. He was sentenced to undergo RI for 2 months and to pay a fine of Rs. 200/-, in default to undergo SI for 7 days for offence punishable under Section 323 of IPC and was sentenced to undergo RI for one month and to pay a fine of Rs. 100/-, in default to undergo SI for 5 days for offence punishable under Section 337 of IPC. All the sentences were ordered to run concurrently. Aggrieved by the said judgement and order, present appeal is preferred.

2. The prosecution case is that unarmed Police Constable Mahammedkhan Bismillakhan working at Pilvai Outpost of Vijapur Police Station lodged a complaint on February 26, 1997 to the effect that on that day at about 8.30 P.M Police Constable Bharatsinh Gandaji working with him at the Pilvai Out-post went to his home at village Kanbha. He came back at about 9.00 P.M and informed the complainant that Natwarbhai Ramabhai Patel of village Kanbha is quarreling at his house. The complainant therefore sent a "Wardhi" for a vehicle and more force, at about 10 - 10.15 P.M. IInd Mobile came alongwith certain Home guards to Pilvai Out-post. The complainant, Police Constable Bharatsinh and 4 home guards all went to village Kanbha in the IInd Mobile. They went to the house of Natvarbhai Ramabhai Patel at about 10.30 P.M. At that time, Natvarbhai was giving abuses from the verandah of his house. Bharatsinh raised a shout in the name of Natubhai and thereupon Natubhai took a stick from the house and rushed to the door. He was asked to stand still but he wielded the stick on head of Bharatsinh. However, Bharatsinh defensively extended his hand and therefore the stick struck on his wrist. Natubhai thereafter escaped from the place. The complainant and his party chased him but he entered into the courtyard and therefrom he started pelting brick-bats, which injured the complainant and others. Thereafter they found that Natubhai had escaped taking cover of darkness. They found that because Natubhai was quarreling with his wife, his wife had also gone away somewhere. Bharatsinh had sustained fracture because of the stick blow.

3. On lodgement of his complaint, an FIR was registered and investigation made. Having found sufficient evidence to connect Natubhai, the appellant

herein, with the offence, a charge-sheet came to be filed in the Magisterial Court and the case ultimately came to be committed to the Court of Sessions as the offences were triable by Sessions Court exclusively and Sessions Case No. 254/97 came to be registered.

4. Charge against the accused appellant was framed at Ex.4 for offences punishable under Sections 333, 323, 325, 337 and 504 of IPC and Section 135 of the Bombay Police Act. The accused pleaded not guilty to the charge and claimed to be tried.

5. The prosecution adduced evidence and considering the evidence led by the prosecution, the trial Court came to a conclusion that the prosecution was able to establish charges punishable under Sections 332, 323 and 337 of IPC, whereas other charges were not proved. The Sessions Court therefore recorded convictions for offences punishable under Sections 332, 323 and 337 of IPC and sentenced the appellant as stated above. However, the Sessions Court recorded acquittal for the other charges.

6. Learned Advocate Mr. Soni appearing for the appellant submitted that the trial Court has committed error in appreciating the evidence. He submitted that the prosecution story taken as a whole is far from being even probable. According to him, three Homeguard persons and two Police personnel receiving injury at the hands of one person and not being able to catch him at the place, by itself is an unbelievable story. Mr. Soni submitted that even as per prosecution case, the appellant had no motive to cause this injury. That on mere being summoned by one of the witnesses the appellant / accused had no reason to assault him. According to Mr. Soni, the prosecution is keeping back the genesis of the incident. The evidence of witnesses is contradictory, one witness says that the accused was giving abuses from his verandah, the other says he was assaulted and was awakened by complainant, the third witness gives out a different story. Mr. Soni therefore submitted that the prosecution case thiswise is also not believable. Mr. Soni submitted that although large many persons had gathered as per prosecution case, none of them is examined as a witness, including wife and mother of the accused who have supported the prosecution case. It is submitted that none of them supported the prosecution case during investigation also. It is however, contended that wife and mother of the accused had supported the prosecution case, but they are not examined as witnesses. Mr. Soni submitted that the accused himself had

sustained injuries and these injuries are not explained by the prosecution. The version of the accused that the complainant and others were assaulted upon by the villagers gets a support thereby and admittedly the complainant and Bharatsinh were prosecuted for corruption. Mr. Soni submitted that the entire proceedings were conducted by the complainant and his associates without making any entry in relevant registers which go to the root of the story of the prosecution case. Mr Soni therefore submitted that the conviction be set aside by accepting this appeal.

7. Learned Additional Public Prosecutor Mr. Desai, has opposed to this appeal. According to him there is evidence of injured witnesses who have no reason to falsely implicate the accused. They had no reason to go to the house of the accused at 10.30 PM and therefore the defence version is an after-thought. Mr. Desai submitted that the trial Court has considered and appreciated the evidence properly and the appeal therefore may be dismissed.

8. The prosecution evidence consists mainly of the deposition of Police personnel and Medical officer. Police personnel are eye-witnesses to the incident who claim to have sustained injuries in the incident.

8.1. Mahammadkhan Bismillakhan, the complainant is examined at Ex.10. He was working at Pilvai Outpost of Vijapur Police Station as Head Constable on February 26, 1997. Police Constable Bharatsinh Gandaji and Dineshchandra Lavjibhai were also present at the out-post. Bharatsinh went at about 8.30 P.M to his house, but returned at about 9.00 P.M and informed that Natvarbhai Ramabhai Patel of village Kanbha was quarreling at his house. The complainant therefore informed Vijapur Police Station by wireless. IInd Mobile from Vijapur Police Station arrived at around 10.00 to 10.15 P.M. at the out-post. There were three home guard personnel in the Mobile van, Head Constable Bharatsinh alongwith other persons in the mobile van went to village Kanbha at the house of Natvarbhai. They found that Natvarbhai was giving abuses from his verandah and when Bharatsinh called Natvarbhai, Natvarbhai went into the house, came out with a stick and wielded a blow on head of Bharatsinh, however, Bharatsinh defensively raised his hand and received the blow on his right wrist. Natvarbhai thereafter ran away into the courtyard. The Police personnel chased Natvarbhai and therefore he started pelting stones. The complainant received injuries therefrom on right wrist and right palm. He

says that Natvarbhai escaped in the dark. The Police personnel as well as the Homeguard personnels went in the Mobile to Vijapur Government Hospital and took treatment. Therefrom they went to Police Station and lodged complaint which is Ex. 11.

The witness is cross-examined and he admits that he has made no entry in the Station diary regarding the information received by him through Bharatsinh about Natvarbhai quarreling in his house. He has not made any entry in the Police diary either. He admits that Pilvai out-post has the facility of wireless set and that a wireless register is maintained. He admits that he has not made any entry regarding information given by him to Vijapur Police Station on wireless regarding the information given to him by Bharatsinh. He also admits that he has not made any entry about their going to the place of incident alongwith Homeguard personnel, who had arrived in the Mobile van. He also admits that he has not made any entry in the Police diary regarding the injury sustained by them. He states that when he left the Police out-post, he has not handed over charge of the out-post to any Head Constable. He says that on getting information about the incident through Bharatsinh, he called for mobile van and bandobast in anticipation of the situation taking a serious turn. He admits that whenever he has to go out for investigation, necessary entry is required to be made in Police dairy. He states that when they went to this place, about 30 to 40 persons had gathered near the house of Navarbhai. He further says that when they went to the house of Natvarbhai at the time of the incident, he and Bharatsinh were in uniform. He admits that the village people had not supported or corroborated his complaint in the interrogation by N.G. Patel, during the course of investigation. He states that the mother of the accused and wife of the accused had supported the complaint. He pleads ignorance about whether Bharatsinh drinks or not. He also pleads his ignorance about Bharatsinh being a corrupt Policeman. He denied the suggestion that Bharatsinh knocks down money from village people. He also pleads ignorance as to whether Bharatsinh had some dispute with Patels of the village regarding monetary transaction. He also denies that he had gone to village Kanba with the mobile to the rescue of Bharatsinh. He denied the suggestion that villagers had pelted stone at the complainant and his team. He admits that when the accused Natvarbhai was arrested, he had noticed injuries on his person.

8.2 The complaint is at Ex. 11, which is on the same

line as the examination-in-chief of the witness.

8.3 Witness Ramabhai Chhaganbhai Patel Ex. 12 is the panch witness to the panchnama of the place of incident. The panchnama is at Ex. 13.

8.4 Patel Bikhabbhai Maganbhai Ex.14 says that he was on duty at Community Health Centre at Vijapur on 26.2.1997 when Bharatsinh Gandaji came to him at about 11.00 P.M. He was accompanied by Mahammedkhan Bismillakhan Pathan, Ajaysinh Dhursinh Rathod, Vankar Parsottambhai Haribhai with minor injuries, which could have been caused by hard and blunt substances. He had issued medical certificate.

8.5 Witness Bharatsinh Gandaji is examined at Ex. 19. He was working at Pilvai Out-post on Feb. 26, 1997. He says that when he went to village Kanba at about 8.30 P.M on that day, he learnt that Natvarbhai was quarreling with his wife. He therefore went to the house of Natvarbhai At that time he was misbehaving outside his house. He says that because he was alone, he could not have caught Natvarbhai. Therefore, he went to the Pilvai Out-Post and informed Mahammedkhan Bismillakhan Patan that Natvarbhai Ramabhai is quarreling at his house and he is to be apprehended. Mobile van was therefore summoned from Vijapur Police Station and they went in that mobile van to the house of the accused at about 10.30 P.M. He says that Jamadar Mahammedkhan shouted at Natvarbhai and Natvarbhai came with a stick in his hand. Immediately on arrival, he inflicted a stick blow on him on the left hand. The blow was aimed at the head, but because he moved side, the stick hit on his hand. Thereafter Natvarbhai started running and went into courtyard and therefrom he started throwing stones. Jamadar Mahammedkhan and Homeguard persons were also sustained injuries, but the accused escaped. The witness has been cross-examined and he admits that he is staying at village Kanba in a rental house. He also admits that he is facing a trial in respect of a corruption case. He says that on receiving injury, the pain was so acute that he could not chase the accused. He denies the suggestion about he and Mahammedkhan having gone to collect their instalments and the villagers having pelted stone at them. He also denies the suggestion that the accused was caught when he was chasing them.

8.6 Witness Ajitsinh Dhursinh Rathod, Ex.20 says that he was on Homeguard duty alongwith Parsottambhai Haribhai and Rameshbhai Motibhai at Vijapur Police Station on 26/2/97 and all of them were taken to Kanba village in

mobile. He says that when Jamadar called Natubhai, Natubhai was in a drunken state and he came out to beat and gave a stick blow to Bharatsinh. He was also pelting stones. According to this witness, Natvarbhai thereafter escaped from the rear window. The witness says that they are provided with baton. According to this witness, when they reached the place of incident, about 50 to 60 persons were gathered. The accused was in the osry and he was sleeping. Bharatsinh and Mahammadkhan woke him up by pulling and holding his biceps. Then Bharatsinh, Mahammadkhan and the accused had a scuffle. Accused took a stick from the corner and gave a blow to Bharatsinh on his right hand and thereafter escaped from the rear window. He says that the accused had pelted stone while he was in the veranda.

8.7 Witness Parsottambhai Haribhai is examined at Ex.

21. He says that he was on Homeguard duty at Vijapur Police Station at 10.00 P.M on 26.2.1997 in company of A.D. Rathod and Rameshbhai. PSO told them that there is some problem at village Kanbha as per information from Jamadar of Pilvai Out-post and therefore they were sent to Pilvai Out-post in the mobile van. Mahammedkhan was present there and therefore, Mahammadkhan, Bharatsinh and the others went to village Kanba and reached there at about 10.30 P.M. They went to the house of Natvarbhai. At that time Natvarbhai gave abuses and gave a stick blow to Bharatsinh. Natvarbhai pelted stone, one of which hit witness on his chest. He has been cross-examined, but nothing material comes out of it.

8.8 Witness Ranjitsinh Ramaji Ex. 22 is a punch witness. He has not supported the prosecution case and has been declared as hostile. Other panch is Viramji Amraji Ex. 23. The panchnama is at Ex. 24, which indicates that Bharatsinh had a bandage on his left hand, which was put in a sling.

8.9 The Investigating Officer N.G. Patel is examined at Ex. 27. He admits during cross-examination that Ajitsinh had not stated in his Police statement that Mahammadkhan had gone to wake up the accused and that accused was at that time in a drunken stage.

9. If the evidence as a whole is seen, an impression that is created is that the whole prosecution story and the evidence cannot be considered to be of a sterling quality, nor can it be considered as evidence which is beyond a shadow of reasonable doubt. Reasons can be stated thus:

9.1 The complainant who is a Head Constable goes to the house of the accused in company of three Homeguard personnel and one Police Constable. What they find on reaching the house of the accused is described by different witnesses with notable variance. Likewise, there is no consistency on evidence as to how the incident started in evidence of different witnesses.

9.1.1 According to Mahammedkhan, when they went there the accused was giving abuses while standing in verandah of his house, while as per the deposition of Ajitsinh Durasinh Rathod, accused was in a drunken condition. According to this very witness, accused was sleeping in the osari (verandah) and he was woken up by Bharatsinh and Mahammadkhan and there was a scuffle amongst the three and thereafter accused took out a stick and inflicted a blow on Bharatsinh. According to the complainant, a shout was given by Bharatsinh, whereas Bharatsinh says that it was complainant Mahammadkhan who gave a shout to the accused, whereas Ajitsinh speaks nothing about shout having been given. Likewise, what is stated by Ajitsinh that the accused was drunk and that he was sleeping, is not the version of the complainant or Bharatsinh.

9.2 Further, it is required to be noted that according to Mahammadkhan - the complainant, on receiving information from Bharatsinh sent a wireless message and called for a mobile van and bandobast and on receiving the same they went to the house of the accused. He in terms admits that he had sensed that the situation may take a serious turn. However, despite all these and although he had sufficient time at his disposal till mobile van arrived at Pilvai Out-post from Vijapur, he has not made any entry either in the Station diary or in the Police diary either regarding the information received through Bharatsinh or regarding sending wireless message calling for the mobile van and bandobast or regarding his departure to the place of the incident. The wireless register, though maintained, does not carry any entry regarding the message. All these factors clearly indicate that the purpose or the reason for which the complainant and his team-mates claim to have gone to the place of incident may not be genuine and the witnesses also may not be telling the real truth as their versions do not corroborate each other, but tend to be inconsistent.

9.3 The evidence regarding what happened at the place of incident is also not consistent. Some witnesses say that the accused started pelting stone after going into

the courtyard, whereas some witness says that he was pelting stone from the verandah. It is also very difficult to believe that a Head Constable, a Constable and three of the Homeguard personnels were not able to overpower a single person who was in a drunken stage or who was found to be sleeping. No reasons are indicated for waking up a sleeping man when there is evidence to indicate that even the wife of the accused was not present in the house. Differently put, when everything had settled and cooled down, there was no reason for the Police to have entered the house of the accused and waken him up.

9.4 Interestingly, all the witnesses are consistent about the fact that a large number of persons had gathered at the place of the incident, but none of them has been examined in support of the version given by the prosecution witness. On the contrary, as per admission of the complainant, none of the independent witnesses have supported the prosecution case during investigation. He however, states that mother and wife of the accused had supported the prosecution case, still however, neither of them has been examined as a witness. It may be that non-examination of independent witnesses by itself may not be fatal to the prosecution case, but in the above stated circumstances when the prosecution case suffers from a numerous infirmities, it would be prudent to look for some corroboration from independent witness.

9.5 Even accepting the prosecution evidence as it is, what transpires is that when the complainant and his team-mates approached the house of the accused and either the complainant or Bharatsinh called the accused, he straight-away inflicted a stick blow on Bharatsinh. It is nobody's case that there was only dispute between Bharatsinh and the accused. It is nobody's case that the accused was aware that the complainant and his team-mates had gone in connection with the incident that may have occurred previously and therefore, there is total lack of motive for the accused to have inflicted a stick blow.

10. Taking an overall view of the evidence on record, there is substance in the contention raised by Mr. Soni that the prosecution is not coming out with genuine genesis of the incident. Many questions remain unanswered. Why entries were not made in the Station diary or Police diary or wireless register, why the accused could not be overpowered, why independent witnesses are not examined, why no motive is indicated, are unexplained by the prosecution. The questions having remained unanswered they raise a reasonable doubt in the

prosecution story and therefore the conviction recorded by the trial Court cannot be permitted to stand.

11. The appeal deserves to be allowed for the reasons stated above and same is allowed. The judgement and order dated 10.11.2000 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 254 of 1997 recording conviction of appellant for offence punishable under Sections 332, 343 & 327 of IPC is hereby set aside. The appellant is acquitted of charges under Sections 332, 323 and 327 of Indian Penal Code. His bail-bond stand cancelled. Fine, if paid, be refunded to the appellant.

(A.L.Dave, J.)

*/Mohandas